IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Before the Board of Patent Appeals and Interferences

Applicants:	Joseph Rinchiuso et al.	Art Unit:	2416
Serial Number:	09/760,039	Examiner:	Feben M. Haile
Filing Date:	January 12, 2001	Confirmation:	1866
Docket Number:	CE08395R		
Title:	Packet Data Transmission Within a Broad-Band Communication System		

APPEAL BRIEF

EFS Filing
Mail Stop Appeal Brief—Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

Pursuant to 37 C.F.R. §41.37, the Applicants respectfully submit this brief in support of their appeal.

1. Real Party in Interest

The real party in interest is Motorola, Inc.

2. Related Appeals and Interferences

No related appeals or interferences are known to the Applicants, to the Applicants' legal representatives, or to the assignee that will directly affect, be directly affected by, or have a bearing on the Board's decision in this appeal.

3. Jurisdiction

The Board has jurisdiction under 35 U.S.C. §134(a). The Examiner mailed a final rejection on February 5, 2009, setting a three-month shortened statutory period for response. The time for responding to the final rejection without an extension expires on May 5, 2009. A Notice of Appeal was filed on February 13, 2009. The time for filing an appeal brief without an extension expires on April 13, 2009. This Appeal Brief is being filed on March 30, 2009.

4. Table of Contents

5. Table of Authorities

None.

6. [Reserved]

7. Status of Amendments

No amendment was filed after final rejection.

8. Grounds of Rejection to Be Reviewed

Rejection of independent claims 1 and 7 under 35 U.S.C. §103(a) as obvious in light of U.S. Patents 6,804,219 ("Koo"), 6,529,497 ("Hjelm"), and 6,229,795 ("Pankaj") and U.S. Patent Publication 2002/0082033 ("Lohtia").

9. Statement of Facts

9.1 In some data-transmission protocols, a data channel is allocated when a device has data to send. (Present specification, page 2, lines 3-6)

9.2 In the prior art, the allocated data channel is dropped as soon as a device no longer has data to send. (Ibid, page 2, lines 8-11)

9.3 If the device again has data to send, it must again allocate a data channel. (Ibid, page 2, lines 11-12)

9.4 Re-allocating a data channel whenever the device needs to send data introduces transmission delays ("typically around 200 msec"). (Ibid, page 2, lines 12-14)

9.5 The present specification teaches a method for holding open a data channel even when there is no data to send, thus eliminating the transmission delays due to re-allocating the data channel. (Ibid, page 3, lines 5-18)

9.6 In some embodiments of the present invention, the data channel is held open (when there is no data to send) by sending "dummy data." (Ibid, page 5, lines 3-8)

9.7 The eighth office action, dated February 5, 2009, rejected (page 3) all pending independent claims (1 and 7) under 35 U.S.C. §103(a) as obvious in light of U.S. Patents 6,804,219 ("Koo"), 6,529,497 ("Hjelm"), and 6,229,795 ("Pankaj") and U.S. Patent Publication 2002/0082033 ("Lohtia").

9.8 The eighth office action asserted (page 5) that Koo, Hjelm, and Pankaj do not teach establishing a Temporary Block Flow ("TBF") and keeping the TBF open by transmitting dummy data, but Lohtia teaches this.

9.9 The eighth office action was made final. (Office Action Summary)

9.10 A Notice of Appeal was filed on February 13, 2009.

10. Argument

The argument of the Applicants is quite straightforward: The cited art does not show all of the elements of the pending independent claims 1 and 7. In this argument, claims 1 and 7 stand or fall together.

The Applicants agree with the Examiner that Koo, Hjelm, and Pankaj do not teach the following two elements of claim 1:

> establishing a temporary block flow (TBF) to transmit data over the wireless data channel; and
>
> delaying termination of the TBF by ***transmitting dummy data*** over the wireless data channel.

(Emphasis added. Claim 7 has similar language.) While Lohtia does the teach the first of these two elements, nowhere does it discuss transmitting dummy data to keep the TBF open.

The Examiner points to Lohtia, paragraphs **[0028]** and **[0029]**, for this element of sending dummy data. (Final Rejection mailed February 5, 2009, page 5) However, Lohtia never discusses dummy data at all. In fact, the cited sections of Lohtia teach how to ***signal the release of the TBF*** rather than how to ***delay the TBF's termination***.

Because the cited art, separately or in any combination, does not teach sending dummy data to keep the TBF open, the Applicants consider that claims 1 and 7 are patentable over all of the known art, including especially Lohtia.

Respectfully submitted,

By: /John T. Bretscher/
John T. Bretscher
Attorney of Record
Reg. No.: 52,651
Phone: (847)576-5054
Fax: (847)576-3750

Send Correspondence to:
Motorola, Inc.
1303 East Algonquin Road
IL01/3rd Floor
Schaumburg, Illinois 60196
Customer Number: 22917

Appendix: Claims

1. (Rejected) A method for data transmission within a wireless communication system, the method comprising:

transmitting data over a wireless data channel at a data rate;

determining that no more data need to be transmitted;

delaying dropping the data channel for a time period, wherein the time period is based on the data rate;

establishing a temporary block flow (TBF) to transmit data over the wireless data channel; and

delaying termination of the TBF by transmitting dummy data over the wireless data channel.

2. (Rejected) The method of claim 1 wherein transmitting data over the wireless data channel comprises transmitting data over a Code Division Multiple Access Supplemental Channel.

3. (Rejected) The method of claim 1 wherein the time period is proportional to the data rate.

4-6. (Cancelled)

7. (Rejected) An apparatus comprising:

channel circuitry for transmitting data at a data rate;

a timer coupled to the channel circuitry, wherein the timer delays deactivation of the channel circuitry after data transmission for a period of time, wherein the period of time is based on the data rate;

means for establishing a temporary block flow (TBF) to transmit data over a data channel; and

means for delaying termination of the TBF by transmitting dummy data over the data channel.

8. (Rejected) The apparatus of claim 7 wherein the period of time is proportional to the data rate.

9. (Rejected) The apparatus of claim 7 wherein the channel circuitry comprises CDMA fundamental channel circuitry.

10-14. (Cancelled)

Appendix: Claims Support and Drawing Analysis

1. A method for data transmission within a wireless communication system, the method comprising:

transmitting data over a wireless data channel at a data rate; **{Page 3, lines 21; 801 in Figure 8}**

determining that no more data need to be transmitted; **{Page 3, lines 21-22}**

delaying dropping the data channel for a time period, wherein the time period is based on the data rate; **{Page 3, lines 22-23; 802 in Figure 8}**

establishing a temporary block flow (TBF) to transmit data over the wireless data channel; and **{Page 4, lines 32-33}**

delaying termination of the TBF by transmitting dummy data over the wireless data channel. **{Page 5, lines 1-2; Page 15, lines 3-8; Page 16, lines 20-21; Page 17, lines 4-6 and 16-19; Page 18, lines 4-8 and 21-33; 804 in Figure 8}**

7. An apparatus comprising:

channel circuitry for transmitting data at a data rate; **{Page 3, line 33; 103, 105 in Figure 1; 401 in Figure 5}**

a timer coupled to the channel circuitry, wherein the timer delays deactivation of the channel circuitry after data transmission for a period of time, wherein the period of time is based on the data rate; **{Page 3, line 33, through Page 4, line 2; 102 in Figure 1; 405 in Figure 5}**

means for establishing a temporary block flow (TBF) to transmit data over a data channel; and **{Page 4, lines 32-33; Page 5, lines 4-6}**

means for delaying termination of the TBF by transmitting dummy data over the data channel. **{Page 5, line 1-2 and lines 7-8; Page 15, lines 3-8; Page 16, lines 20-21; Page 17, lines 4-6 and 16-19; Page 18, lines 4-8 and 21-33; 804 in Figure 8}**

Appendix: Means or Step Plus Function Analysis

Claim 7 contains the following two means plus function limitations:

means for establishing a temporary block flow (TBF) ...

means for delaying termination of the TBF ...

The structure, material, or acts corresponding to each of these two means plus-function limitations is set forth in boldface between braces in the annotated copy of claim 7 found in the Claims Support and Drawing Analysis section of this Appendix.

Appendix: Evidence

None.

Appendix: Related Cases

None.